

**Introduced by Committee on Public Safety (Senators McPherson
(Chair), Burton, Margett, Romero, Sher, and Vasconcellos)**

February 20, 2004

An act to amend Sections 832.15, 832.16, 11108.3, 12010, 12011, 12021, and 12082 of, and to repeal Section 12076.5 of, the Penal Code, relating to firearms.

LEGISLATIVE COUNSEL'S DIGEST

SB 1797, as introduced, Committee on Public Safety. Public safety: omnibus bill.

Existing law requires the Department of Justice to notify a state or local agency as to whether an individual applying for a position as a peace officer, as defined, is prohibited from possessing, receiving, owning, or purchasing a firearm, as specified. Existing law requires the applicant to provide the Department of Justice with fingerprints and other identifying information deemed necessary by the department prior to the department making the notification.

This bill would extend the duties to notify and to provide fingerprints to cases where persons are applying for a position as a custodial officer or transportation officer, as specified.

Existing law requires the Department of Justice to notify a state or local agency employing a peace officer, as defined, who is authorized by the employing agency to carry a firearm, as to whether that peace officer is prohibited from possessing, receiving, owning, or purchasing a firearm, as specified. Existing law requires the employing agency to provide the Department of Justice with fingerprints and other identifying information deemed necessary by the department prior to the department making the notification.

This bill would extend the duties to notify and to provide finger prints to cases where persons are custodial officers or transportation officers, as specified.

By imposing additional duties in connection with supplying fingerprints on local law enforcement agencies, this bill would impose a state-mandated local program.

Existing law authorizes local law enforcement agencies to report certain information in connection with recovered firearms illegally possessed, used in a crime, or suspected of being used in a crime, to the Attorney General, as specified.

This bill would make a nonsubstantive, technical change to those provisions.

Existing law establishes the Prohibited Armed Persons File, and requires the Department of Justice to search a specified firearms database in connection with the administration and purposes of the Prohibited Armed Persons File.

This bill would make technical changes to references to the firearms database system the department is required to access.

Existing law provides that every person who purchases or receives, or attempts to purchase or receive, a firearm knowing that he or she is prohibited from doing so by certain restraining or other specified orders, is punishable by imprisonment in a county jail not exceeding one year, or in the state prison, by a fine not exceeding \$1,000, or by both that imprisonment and fine.

This bill would include for those purposes, certain protective orders, as specified.

By expanding the definition of a crime, this bill would impose a state-mandated local program.

Existing law contains 2 identical sections in the Penal Code, each designated 12076.5.

This bill would repeal one of those sections.

Existing law, subject to exceptions, requires persons who are not licensed firearms dealers to complete sales of firearms through licensed firearms dealers, as specified. Existing law also establishes fees that firearms dealers may charge in connection firearms transfers.

This bill would clarify those provisions and preclude the firearms dealer from charging any additional fee for the transaction.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that



reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 832.15 of the Penal Code is amended to
2 read:
3 832.15. (a) On and after October 1, 1993, the Department of
4 Justice shall notify a state or local agency as to whether an
5 individual applying for a position as a peace officer, as defined by
6 this chapter, *or a custodial officer authorized the employing*
7 *agency to carry a firearm pursuant to Section 831.5, or by a*
8 *transportation officer pursuant to Section 831.6 authorized by the*
9 *employing agency to carry a firearm*, is prohibited from
10 possessing, receiving, owning, or purchasing a firearm pursuant to
11 Section 12021 or 12021.1 of the Penal Code, or Section 8100 or
12 8103 of the Welfare and Institutions Code. The notice shall
13 indicate the date that the prohibition expires. However, the notice
14 shall not provide any other information with respect to the basis for
15 the prohibition.
16 (b) Before providing the information specified in subdivision
17 (a), the peace officer, *custodial officer, or transportation officer*
18 applicant shall provide the Department of Justice with fingerprints
19 and other identifying information deemed necessary by the
20 department.
21 (c) The Department of Justice may charge the applicant a fee
22 sufficient to reimburse its costs for furnishing the information
23 specified in subdivision (a).

(d) The notice required by this section shall not apply to persons receiving treatment under subdivision (a) of Section 8100 of the Welfare and Institutions Code.

SEC. 2. Section 832.16 of the Penal Code is amended to read:

832.16. (a) On and after October 1, 1993, the Department of Justice shall notify a state or local agency employing a peace officer, as defined by this chapter, *or custodial officer, or transportation officer*, who is authorized by the employing agency to carry a firearm, as to whether ~~a~~ *that* peace officer, *custodial officer, or transportation officer* is prohibited from possessing, receiving, owning, or purchasing a firearm pursuant to Section 12021 or 12021.1 of the Penal Code, or Section 8100 or 8103 of the Welfare and Institutions Code. The notice shall indicate the date that the prohibition expires. However, the notice shall not provide any other information with respect to the basis for the prohibition.

(b) Before providing the information specified in subdivision (a), the agency employing the peace officer, *custodial officer, or transportation officer* shall provide the Department of Justice with the officer's fingerprints and other identifying information deemed necessary by the department.

(c) The information specified in this section shall only be provided by the Department of Justice subject to the availability of funding.

(d) The notice required by this section shall not apply to persons receiving treatment under subdivision (a) of Section 8100 of the Welfare and Institutions Code.

SEC. 3. Section 11108.3 of the Penal Code is amended to read:

11108.3. (a) In addition to the requirements of Section 11108 that apply to a local law enforcement agency's duty to report to the Department of Justice the recovery of a firearm, a police or sheriff's department shall, and any other law enforcement agency or agent may, report to the department in a manner determined by the Attorney General in consultation with the Bureau of Alcohol, Tobacco, ~~and~~ *Firearms and Explosives* all available information necessary to identify and trace the history of all recovered firearms that are illegally possessed, have been used in a crime, or are suspected of having been used in a crime. In addition, any law enforcement agency or agent may report to the Attorney General

1 pursuant to this section all information pertaining to any firearm
2 taken into custody, except where the firearm has been voluntarily
3 placed with the law enforcement agency for safekeeping.

4 (b) When the department receives information from a local law
5 enforcement agency pursuant to subdivision (a), it shall promptly
6 forward this information to the National Tracing Center of the
7 federal Bureau of Alcohol, Tobacco, ~~and~~ *Firearms and Explosives*
8 to the extent practicable.

9 (c) The Department of Justice shall implement an electronic
10 system by January 1, 2002, to receive comprehensive tracing
11 information from each local law enforcement agency, and to
12 forward this information to the National Tracing Center.

13 (d) In implementing this section, the Attorney General shall
14 ensure to the maximum extent practical that both of the following
15 apply:

16 (1) The information he or she provides to the federal Bureau of
17 Alcohol, Tobacco, ~~and~~ *Firearms and Explosives* enables that
18 agency to trace the ownership of the firearm described in
19 subdivision (a).

20 (2) Local law enforcement agencies can report all relevant
21 information without being unduly burdened by this reporting
22 function.

23 (e) Information collected pursuant to this section shall be
24 maintained by the department for a period of not less than 10 years,
25 and shall be available, under guidelines set forth by the Attorney
26 General, for academic and policy research purposes.

27 (f) The Attorney General shall have the authority to issue
28 regulations to further the purposes of this section.

29 SEC. 4. Section 12010 of the Penal Code is amended to read:

30 12010. (a) The Attorney General shall establish and maintain
31 an online data base to be known as the Prohibited Armed Persons
32 File. The purpose of the file is to cross-reference persons who have
33 ownership or possession of a firearm on or after January 1, 1991,
34 as indicated by a ~~Dealers' Record of Sale recorded~~ *record* in the
35 ~~Automated Firearms Consolidated Firearms Information System~~,
36 and who, subsequent to the date of that ownership or possession
37 of a firearm, fall within a class of persons who are prohibited from
38 owning or possessing a firearm.

39 (b) The information contained in the Prohibited Armed
40 Persons File shall only be available to those entities specified in,

1 and pursuant to, subdivision (b) or (c) of Section 11105, through
2 the California Law Enforcement Telecommunications System, for
3 the purpose of determining if persons are armed and prohibited
4 from possessing firearms.

5 SEC. 5. Section 12011 of the Penal Code is amended to read:

6 12011. The Prohibited Armed Persons File data base shall
7 function as follows:

8 (a) Upon entry into the Automated Criminal History System of
9 a disposition for a conviction of any felony, a conviction for any
10 firearms-prohibiting charge specified in Section 12021, a
11 conviction for an offense described in Section 12021.1, a firearms
12 prohibition pursuant to Section 8100 or 8103 of the Welfare and
13 Institutions Code, or any firearms possession prohibition
14 identified by the federal National Instant Check System, the
15 Department of Justice shall determine if the subject has an entry
16 in the ~~Automated Firearms~~ *Consolidated Firearms Information*
17 System indicating possession or ownership of a firearm on or after
18 January 1, 1991, or an assault weapon registration.

19 (b) Upon an entry into any department automated information
20 system that is used for the identification of persons who are
21 prohibited from acquiring, owning, or possessing firearms, the
22 department shall determine if the subject has an entry in the
23 ~~Automated Firearms~~ *Consolidated Firearms Information* System
24 indicating ownership or possession of a firearm on or after January
25 1, 1991, or an assault weapon registration.

26 (c) If the department determines that, pursuant to subdivision
27 (a) or (b), the subject has an entry in the ~~Automated Firearms~~
28 *Consolidated Firearms Information* System indicating possession
29 or ownership of a firearm on or after January 1, 1991, or an assault
30 weapon registration, the following information shall be entered
31 into the Prohibited Armed Persons File:

32 (1) The subject's name.

33 (2) The subject's date of birth.

34 (3) The subject's physical description.

35 (4) Any other identifying information regarding the subject
36 that is deemed necessary by the Attorney General.

37 (5) The basis of the firearms possession prohibition.

38 (6) A description of all firearms owned or possessed by the
39 subject, as reflected by the ~~Automated Firearms~~ *Consolidated*
40 *Firearms Information* System.

SEC. 6. Section 12021 of the Penal Code is amended to read:

12021. (a) (1) Any person who has been convicted of a felony under the laws of the United States, of the State of California, or any other state, government, or country, or of an offense enumerated in subdivision (a), (b), or (d) of Section 12001.6, or who is addicted to the use of any narcotic drug, who owns, purchases, receives, or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

(2) Any person who has two or more convictions for violating paragraph (2) of subdivision (a) of Section 417 and who owns, purchases, receives, or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

(b) Notwithstanding subdivision (a), any person who has been convicted of a felony or of an offense enumerated in Section 12001.6, when that conviction results from certification by the juvenile court for prosecution as an adult in an adult court under Section 707 of the Welfare and Institutions Code, who owns or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

(c) (1) Except as provided in subdivision (a) or paragraph (2) of this subdivision, any person who has been convicted of a misdemeanor violation of Section 71, 76, 136.1, 136.5, or 140, subdivision (d) of Section 148, Section 171b, 171c, 171d, 186.28, 240, 241, 242, 243, 244.5, 245, 245.5, 246.3, 247, 273.5, 273.6, 417, 417.1, 417.2, 417.6, 422, 626.9, 646.9, 12023, or 12024, subdivision (b) or (d) of Section 12034, Section 12040, subdivision (b) of Section 12072, subdivision (a) of former Section 12100, Section 12220, 12320, or 12590, or Section 8100, 8101, or 8103 of the Welfare and Institutions Code, any firearm-related offense pursuant to Sections 871.5 and 1001.5 of the Welfare and Institutions Code, or of the conduct punished in paragraph (3) of subdivision of Section 12072, and who, within 10 years of the conviction, owns, purchases, receives, or has in his or her possession or under his or her custody or control, any firearm is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine. The court, on forms prescribed by the Department of Justice, shall notify the department of persons subject to this subdivision. However, the

1 prohibition in this paragraph may be reduced, eliminated, or
2 conditioned as provided in paragraph (2) or (3).

3 (2) Any person employed as a peace officer described in
4 Section 830.1, 830.2, 830.31, 830.32, 830.33, or 830.5 whose
5 employment or livelihood is dependent on the ability to legally
6 possess a firearm, who is subject to the prohibition imposed by this
7 subdivision because of a conviction under Section 273.5, 273.6, or
8 646.9, may petition the court only once for relief from this
9 prohibition. The petition shall be filed with the court in which the
10 petitioner was sentenced. If possible, the matter shall be heard
11 before the same judge that sentenced the petitioner. Upon filing the
12 petition, the clerk of the court shall set the hearing date and shall
13 notify the petitioner and the prosecuting attorney of the date of the
14 hearing. Upon making each of the following findings, the court
15 may reduce or eliminate the prohibition, impose conditions on
16 reduction or elimination of the prohibition, or otherwise grant
17 relief from the prohibition as the court deems appropriate:

18 (A) Finds by a preponderance of the evidence that the
19 petitioner is likely to use a firearm in a safe and lawful manner.

20 (B) Finds that the petitioner is not within a prohibited class as
21 specified in subdivision (a), (b), (d), (e), or (g) or Section 12021.1,
22 and the court is not presented with any credible evidence that the
23 petitioner is a person described in Section 8100 or 8103 of the
24 Welfare and Institutions Code.

25 (C) Finds that the petitioner does not have a previous
26 conviction under this subdivision no matter when the prior
27 conviction occurred.

28 In making its decision, the court shall consider the petitioner's
29 continued employment, the interest of justice, any relevant
30 evidence, and the totality of the circumstances. The court shall
31 require, as a condition of granting relief from the prohibition under
32 this section, that the petitioner agree to participate in counseling
33 as deemed appropriate by the court. Relief from the prohibition
34 shall not relieve any other person or entity from any liability that
35 might otherwise be imposed. It is the intent of the Legislature that
36 courts exercise broad discretion in fashioning appropriate relief
37 under this paragraph in cases in which relief is warranted.
38 However, nothing in this paragraph shall be construed to require
39 courts to grant relief to any particular petitioner. It is the intent of
40 the Legislature to permit persons who were convicted of an offense

1 specified in Section 273.5, 273.6, or 646.9 to seek relief from the
2 prohibition imposed by this subdivision.

3 (3) Any person who is subject to the prohibition imposed by
4 this subdivision because of a conviction of an offense prior to that
5 offense being added to paragraph (1) may petition the court only
6 once for relief from this prohibition. The petition shall be filed
7 with the court in which the petitioner was sentenced. If possible,
8 the matter shall be heard before the same judge that sentenced the
9 petitioner. Upon filing the petition, the clerk of the court shall set
10 the hearing date and notify the petitioner and the prosecuting
11 attorney of the date of the hearing. Upon making each of the
12 following findings, the court may reduce or eliminate the
13 prohibition, impose conditions on reduction or elimination of the
14 prohibition, or otherwise grant relief from the prohibition as the
15 court deems appropriate:

16 (A) Finds by a preponderance of the evidence that the
17 petitioner is likely to use a firearm in a safe and lawful manner.

18 (B) Finds that the petitioner is not within a prohibited class as
19 specified in subdivision (a), (b), (d), (e), or (g) or Section 12021.1,
20 and the court is not presented with any credible evidence that the
21 petitioner is a person described in Section 8100 or 8103 of the
22 Welfare and Institutions Code.

23 (C) Finds that the petitioner does not have a previous
24 conviction under this subdivision, no matter when the prior
25 conviction occurred.

26 In making its decision, the court may consider the interest of
27 justice, any relevant evidence, and the totality of the
28 circumstances. It is the intent of the Legislature that courts exercise
29 broad discretion in fashioning appropriate relief under this
30 paragraph in cases in which relief is warranted. However, nothing
31 in this paragraph shall be construed to require courts to grant relief
32 to any particular petitioner.

33 (4) Law enforcement officials who enforce the prohibition
34 specified in this subdivision against a person who has been granted
35 relief pursuant to paragraph (2) or (3) shall be immune from any
36 liability for false arrest arising from the enforcement of this
37 subdivision unless the person has in his or her possession a
38 certified copy of the court order that granted the person relief from
39 the prohibition. This immunity from liability shall not relieve any

1 person or entity from any other liability that might otherwise be
2 imposed.

3 (d) (1) Any person who, as an express condition of probation,
4 is prohibited or restricted from owning, possessing, controlling,
5 receiving, or purchasing a firearm and who owns, purchases,
6 receives, or has in his or her possession or under his or her custody
7 or control, any firearm but who is not subject to subdivision (a) or
8 (c) is guilty of a public offense, which shall be punishable by
9 imprisonment in a county jail not exceeding one year or in the state
10 prison, by a fine not exceeding one thousand dollars (\$1,000), or
11 by both that imprisonment and fine. The court, on forms provided
12 by the Department of Justice, shall notify the department of
13 persons subject to this subdivision. The notice shall include a copy
14 of the order of probation and a copy of any minute order or abstract
15 reflecting the order and conditions of probation.

16 (2) For any person who is subject to subdivision (a), (b), or (c),
17 the court shall, at the time judgment is imposed, provide on a form
18 supplied by the Department of Justice, a notice to the defendant
19 prohibited by this section from owning, purchasing, receiving,
20 possessing or having under his or her custody or control, any
21 firearm. The notice shall inform the defendant of the prohibition
22 regarding firearms and include a form to facilitate the transfer of
23 firearms. Failure to provide the notice shall not be a defense to a
24 violation of this section.

25 (e) Any person who (1) is alleged to have committed an offense
26 listed in subdivision (b) of Section 707 of the Welfare and
27 Institutions Code, an offense described in subdivision (b) of
28 Section 1203.073, or any offense enumerated in paragraph (1) of
29 subdivision (c), or any offense described in subdivision (a) of
30 Section 12025, subdivision (a) of Section 12031, or subdivision
31 (a) of Section 12034, and (2) is subsequently adjudged a ward of
32 the juvenile court within the meaning of Section 602 of the Welfare
33 and Institutions Code because the person committed an offense
34 listed in subdivision (b) of Section 707 of the Welfare and
35 Institutions Code, an offense described in subdivision (b) of
36 Section 1203.073, or any offense enumerated in paragraph (1) of
37 subdivision (c) shall not own, or have in his or her possession or
38 under his or her custody or control, any firearm until the age of 30
39 years. A violation of this subdivision shall be punishable by
40 imprisonment in a county jail not exceeding one year or in the state

1 prison, by a fine not exceeding one thousand dollars (\$1,000), or
 2 by both that imprisonment and fine. The juvenile court, on forms
 3 prescribed by the Department of Justice, shall notify the
 4 department of persons subject to this subdivision.
 5 Notwithstanding any other law, the forms required to be submitted
 6 to the department pursuant to this subdivision may be used to
 7 determine eligibility to acquire a firearm.

8 (f) Subdivision (a) shall not apply to a person who has been
 9 convicted of a felony under the laws of the United States unless
 10 either of the following criteria is satisfied:

11 (1) Conviction of a like offense under California law can only
 12 result in imposition of felony punishment.

13 (2) The defendant was sentenced to a federal correctional
 14 facility for more than 30 days, or received a fine of more than one
 15 thousand dollars (\$1,000), or received both punishments.

16 (g) (1) Every person who purchases or receives, or attempts to
 17 purchase or receive, a firearm knowing that he or she is prohibited
 18 from doing so by a temporary restraining order or injunction
 19 issued pursuant to Section 527.6 or 527.8 of the Code of Civil
 20 Procedure, *a protective order as defined in Section 6218 of the*
 21 *Family Code*, a protective order issued pursuant to Section 136.2
 22 or 646.91 of this code, or by a protective order issued pursuant to
 23 Section 15657.03 of the Welfare and Institutions Code, is guilty of
 24 a public offense, which shall be punishable by imprisonment in a
 25 county jail not exceeding one year or in the state prison, by a fine
 26 not exceeding one thousand dollars (\$1,000), or by both that
 27 imprisonment and fine.

28 (2) Every person who owns or possesses a firearm knowing that
 29 he or she is prohibited from doing so by a temporary restraining
 30 order or injunction issued pursuant to Section 527.6 or 527.8 of the
 31 Code of Civil Procedure, a protective order as defined in Section
 32 6218 of the Family Code, a protective order issued pursuant to
 33 Section 136.2 or 646.91 of this code, or by a protective order
 34 issued pursuant to Section 15657.03 of the Welfare and
 35 Institutions Code, is guilty of a public offense, which shall be
 36 punishable by imprisonment in a county jail not exceeding one
 37 year, by a fine not exceeding one thousand dollars (\$1,000), or by
 38 both that imprisonment and fine.

39 (3) Judicial Council shall provide notice on all protective
 40 orders that the respondent is prohibited from owning, possessing,

1 purchasing, receiving, or attempting to purchase or receive a
2 firearm while the protective order is in effect. The order shall also
3 state that the firearm shall be relinquished to the local law
4 enforcement agency for that jurisdiction or sold to a licensed gun
5 dealer, and that proof of surrender or sale shall be filed within a
6 specified time of receipt of the order. The order shall state the
7 penalties for a violation of the prohibition. The order shall also
8 state on its face the expiration date for relinquishment.

9 (4) If probation is granted upon conviction of a violation of this
10 subdivision, the court shall impose probation consistent with the
11 provisions of Section 1203.097.

12 (h) (1) A violation of subdivision (a), (b), (c), (d), or (e) is
13 justifiable where all of the following conditions are met:

14 (A) The person found the firearm or took the firearm from a
15 person who was committing a crime against him or her.

16 (B) The person possessed the firearm no longer than was
17 necessary to deliver or transport the firearm to a law enforcement
18 agency for that agency's disposition according to law.

19 (C) If the firearm was transported to a law enforcement agency,
20 it was transported in accordance with paragraph (18) of
21 subdivision (a) of Section 12026.2.

22 (D) If the firearm is being transported to a law enforcement
23 agency, the person transporting the firearm has given prior notice
24 to the law enforcement agency that he or she is transporting the
25 firearm to the law enforcement agency for disposition according
26 to law.

27 (2) Upon the trial for violating subdivision (a), (b), (c), (d), or
28 (e), the trier of fact shall determine whether the defendant was
29 acting within the provisions of the exemption created by this
30 subdivision.

31 (3) The defendant has the burden of proving by a
32 preponderance of the evidence that he or she comes within the
33 provisions of the exemption created by this subdivision.

34 (i) Subject to available funding, the Attorney General, working
35 with the State Judicial Council, the California Alliance Against
36 Domestic Violence, prosecutors, and law enforcement, probation,
37 and parole officers, shall develop a protocol for the
38 implementation of the provisions of this section. The protocol
39 shall be designed to facilitate the enforcement of restrictions on
40 firearm ownership, including provisions for giving notice to



defendants who are restricted, provisions for informing those defendants of the procedures by which defendants shall dispose of firearms when required to do so, provisions explaining how defendants shall provide proof of the lawful disposition of firearms, and provisions explaining how defendants may obtain possession of seized firearms when legally permitted to do so pursuant to this section or any other provision of law. The protocol shall be completed on or before January 1, 2005.

SEC. 7. Section 12076.5 of the Penal Code, as added by Chapter 940 of the Statutes of 2001, is repealed.

~~12076.5. (a) The Firearms Safety and Enforcement Special Fund is hereby established in the State Treasury and shall be administered by the Department of Justice. Notwithstanding Section 13340 of the Government Code, all moneys in the fund are continuously appropriated to the Department of Justice without regard to fiscal years for the purpose of implementing and enforcing the provisions of Article 8 (commencing with Section 12800), as added by the Statutes of 2001, enforcing the provisions of this title, and for the establishment, maintenance and upgrading of equipment and services necessary for firearms dealers to comply with Section 12077.~~

~~(b) The Department of Justice may require firearms dealers to charge each person who obtains a firearm a fee not to exceed five dollars (\$5) for each transaction. Revenues from this fee shall be deposited in the Firearms Safety and Enforcement Special Fund.~~

SEC. 8. Section 12082 of the Penal Code is amended to read:

12082. (a) A person shall complete any sale, loan, or transfer of a firearm through a person licensed pursuant to Section 12071 in accordance with this section in order to comply with *Section 12070*, subdivision (d) of Section 12072, *and subdivision (b) of Section 12801*. The seller or transferor or the person loaning the firearm shall deliver the firearm to the dealer who shall retain possession of that firearm. The dealer shall then deliver the firearm to the purchaser or transferee or the person being loaned the firearm, if it is not prohibited, in accordance with subdivision (c) of Section 12072. If the dealer cannot legally deliver the firearm to the purchaser or transferee or the person being loaned the firearm, the dealer shall forthwith, without waiting for the conclusion of the waiting period described in Sections 12071 and 12072, return the firearm to the transferor or seller or the person

1 loaning the firearm. The dealer shall not return the firearm to the
2 seller or transferor or the person loaning the firearm when to do so
3 would constitute a violation of subdivision (a) of Section 12072.
4 If the dealer cannot legally return the firearm to the transferor or
5 seller or the person loaning the firearm, then the dealer shall
6 forthwith deliver the firearm to the sheriff of the county or the chief
7 of police or other head of a municipal police department of any city
8 or city and county who shall then dispose of the firearm in the
9 manner provided by Sections 12028 and 12032. The purchaser or
10 transferee or person being loaned the firearm may be required by
11 the dealer to pay a fee not to exceed ten dollars (\$10) per firearm,
12 and no other fee may be charged by the dealer for a sale, loan, or
13 transfer of a firearm conducted pursuant to this section, except for
14 the applicable fee that the Department of Justice may charge
15 pursuant to Section 12076 fees that may be charged pursuant to
16 Sections 12076, 12076.5 and 12088.9 and forwarded to the
17 Department of Justice. Nothing in these provisions shall prevent
18 a dealer from charging a smaller fee. ~~The fee that the department~~
19 ~~may charge is the fee that would be applicable pursuant to Section~~
20 ~~12076, if the dealer was selling, transferring, or delivering a~~
21 ~~firearm to a purchaser or transferee or person being loaned a~~
22 ~~firearm, without any other parties being involved in the transaction~~
23 *The dealer may not charge any additional fees.*

24 (b) The Attorney General shall adopt regulations under this
25 section to do all of the following:

26 (1) Allow the seller or transferor of the person loaning the
27 firearm, and the purchaser or transferee or the person being loaned
28 the firearm, to complete a sale, loan, or transfer through a dealer,
29 and to allow those persons and the dealer to comply with the
30 requirements of this section and Sections 12071, 12072, 12076,
31 and 12077 and to preserve the confidentiality of those records.

32 (2) Where a personal handgun importer is selling or
33 transferring a pistol, revolver, or other firearm capable of being
34 concealed upon the person to comply with clause (ii) of
35 subparagraph (A) of paragraph (2) of subdivision (f) of Section
36 12072, to allow a personal handgun importer's ownership of the
37 pistol, revolver, or other firearm capable of being concealed upon
38 the person being sold or transferred to be recorded in a manner that
39 if the firearm is returned to that personal handgun importer
40 because the sale or transfer cannot be completed, the Department

1 of Justice will have sufficient information about that personal
2 handgun importer so that a record of his or her ownership can be
3 maintained in the registry provided by subdivision (c) of Section
4 11106.

5 (3) Ensure that the register or record of electronic transfer shall
6 state the name and address of the seller or transferor of the firearm
7 or the person loaning the firearm and whether or not the person is
8 a personal handgun importer in addition to any other information
9 required by Section 12077.

10 (c) Notwithstanding any other provision of law, a dealer who
11 does not sell, transfer, or keep an inventory of handguns is not
12 required to process private party transfers of handguns.

13 (d) A violation of this section by a dealer is a misdemeanor.

14 SEC. 9. No reimbursement is required by this act pursuant to
15 Section 6 of Article XIII B of the California Constitution for
16 certain costs that may be incurred by a local agency or school
17 district because in that regard this act creates a new crime or
18 infraction, eliminates a crime or infraction, or changes the penalty
19 for a crime or infraction, within the meaning of Section 17556 of
20 the Government Code, or changes the definition of a crime within
21 the meaning of Section 6 of Article XIII B of the California
22 Constitution.

23 However, notwithstanding Section 17610 of the Government
24 Code, if the Commission on State Mandates determines that this
25 act contains other costs mandated by the state, reimbursement to
26 local agencies and school districts for those costs shall be made
27 pursuant to Part 7 (commencing with Section 17500) of Division
28 4 of Title 2 of the Government Code. If the statewide cost of the
29 claim for reimbursement does not exceed one million dollars
30 (\$1,000,000), reimbursement shall be made from the State
31 Mandates Claims Fund.